

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

**HAWAI'I ISLAND BURIAL COUNCIL
MEETING MINUTES**

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DATE: THURSDAY, MARCH 16, 2006
TIME: 10:00 AM
PLACE: WAIMEA COMMUNITY CENTER
65-1260 KAWAIHAE ROAD
KAMUELA, HAWAI'I

ATTENDANCE:

HIBC MEMBERS: Charles Young, Chair
Ulu Sherlock, Vice-Chair, Hilo
Leningrad Elarionoff, Kohala
Ronald Dela Cruz, Kohala
Roger Harris
Roy Helbush
Cynthia Nazara, Kona
Dutchie Saffrey, Puna

ABSENT: Pele Hanoa, Ka'u
Anna Cariaga, Ka'u
Ku Kahakalau, Hamakua
Kaleo Kualii, Kona
Jacqui Hoover

STAFF: Keola Lindsey, SHPD- History and Culture Branch
Julie Endicott-Taomia, SHPD- Hawai'i Island Archaeologist
Mary Anne Maignet, SHPD- Hawai'i Island Assistant Archaeologist
Linda Chow, Deputy Attorney General

GUESTS: Jim Medlin Nani Langridge
Paul Kay Ruby McDonald
Juanna Pi'iali'i Curtis Tyler
Leeann P. Leslie Keawe Vredenburg
Tom Wolforth
Kapua Kane
Iwalani Arakaki
Marian Channels
Olivia Nenio

I. OPENING REMARKS

HIBC Chair Charles Young (Young) called the meeting to order at 10:30 am.

A moment of silence was held in memory of Keolalani Hanoa.

Young offered a pule.

Introduction of HIBC members, SHPD staff and the Deputy Attorney General.

II. APPROVAL OF THE FEBRUARY 16, 2006 HIBC MEETING MINUTES

A motion was made to approve the February 16, 2006 HIBC meeting minutes (Elarionoff/Helbush)

Vote: All in favor

III. BUSINESS

A. BURIAL TREATMENT PLAN FOR THE KALOKO HEIGHTS PROJECT KALOKO AND KOHANAIKI AHUPUA'A, NORTH KONA DISTRICT, HAWAII ISLAND TMK (3) 7-3-009:032

Information/Recommendation/Determination: Informational presentation of the burial treatment plan by Scientific Consultant Services, Inc. Discussion of the short and long term preservation measures detailed in the burial treatment plan. Recommendations from the Hawaii'i Island Burial Council on the short and long term preservation measures detailed in the burial treatment plan. Recognition of lineal and/or cultural descendants.

Paul Kay (Kay) of Stanford Carr Development (SCD) gave an overview of the project. The majority of the project is within Kaloko Ahupua'a and a small portion of the project is within Kohanaiki Ahupua'a. The project is on approximately 200 acres of land.

The entitlements for the project have been in place for about 20 years. The original developer of the property was a Japanese company, and the project was called the "Y O Development". That company never moved forward with the plan. The existing entitlements provide for 15,000, 10,000 and 7500 square foot lots. An area of the project is set aside for multi-family use, which will comprise most of the affordable housing related to this project. A small neighborhood commercial increment will include a grocery store, gas station and so on. The project will also include a recreation center for the entire community.

The archaeological inventory survey (AIS) and subsequent burial treatment plan (BTP) did a very thorough review of the entire acreage. The sites that have been identified will be described by Tom Wolforth of Scientific Consulting Services, Inc. (SCS), who conducted that work. The proposal for the burial sites is preservation in place.

Leningrad Elarionoff (Elarionoff) asked Kay to confirm that the entitlements for this project have been in place for 20 years.

Kay said yes, the entitlements have been in place since about 1983.

Elarionoff asked if this project was within a project district.

Kay answered no.

Elarionoff asked Kay if there is any desire to make it into a project district.

Kay answered not at this time.

Dutchie Saffrey (Saffrey) asked Kay what the total number of homes will be.

Kay answered 750-800 homes.

Saffrey asked how that will affect the traffic problem.

Kay answered that they have gone through traffic studies and there are more to come. Hina Lani Street was designed as a major mauka-makai connector. The biggest problem area would be the connection at the top. Kay said the County is installing a traffic light at the top of Hina Lani and that should be activated shortly. Kay said they do meet quarterly with the County Planning Department to discuss these regional road issues.

Young asked Kay about the affordable housing, how many affordable units will there be and what is the definition of affordable.

Kay answered the affordable housing component of the project is primarily within the multi family area which are either townhouses or there is a detached condominium product. There will also be an increment in the 7500 square foot lots. The total number of affordable houses will be approximately 150 units. At build out, that number may be a little higher.

Ulu Sherlock (Sherlock) asked Kay to put a dollar amount on the affordable houses.

Kay answered that it varies from year to year because it is all based on current medium income and current mortgage interest rates. In 2005, it ranged from \$195,000 to \$275,000.

The costs of a project on Hawai'i Island are significantly higher than on O'ahu. The qualifying incomes on Hawai'i Island tend to be lower than on O'ahu. Affordable housing is a real challenge. Stanford Carr Development (SCD) has a reputation to always produce value for the dollar, and their first Developments in the early 1990's were affordable houses in Kapolei, O'ahu.

Young said the project appears to be high density for the amount of acreage. It has always been easier to facilitate buffers from burials when the lots are larger in size because then it does not encumber the landowner and it does afford the HIBC members some latitude in approving an accepted buffer.

Kay said one of the first things they did even before escrow closed on this property in late 2004, was to start the archaeological inventory survey. They wanted to first identify what sites were going to be preserved in place and then develop the project plan around that.

Tom Wolforth (Wolforth) of Scientific Consulting Services, Inc. (SCS) gave an overview of the archaeology work related to the project.

The archaeology for this project began nearly 20 years ago and was conducted by another archaeological consultant, William Barrera who wrote a report that was not quite complete. When Stanford Carr Development took over, they hired Wolforth's company to finish the work.

Wolforth said Barrera did conduct excavations that encountered human remains and back then they removed those remains.

Page 3 of the BTP depicts the area which SCS surveyed. The majority of the project within Kaloko Ahupua'a was bulldozed during the Huehue Ranch time, so very few archaeological features were identified there. The Kohanaiki Ahupua'a portion of the project had not been bulldozed and lots of archaeological sites were identified. In that un-bulldozed portion SCS identified 37 caves. Most of these caves are very interesting in that they were used for collecting water. Wolforth felt that because these caves were actively used, only a few were used for burial.

SCS conducted test excavations at 30 surface sites and human remains were identified at only one of those sites. There are also habitation sites, agricultural sites, trails and petroglyphs.

A total of seven burial sites have been identified. Five are in caves and two are in surface platforms. One of the platforms is a heiau. Barrera conducted excavations in this heiau site and identified human remains.

The human remains from the Barrera excavations are in temporary curation at the SHPD Hawai'i Island office. As part of this plan, SCD wants to return these remains to where they came from.

Wolforth met with a total of 14 people during the development of the BTP. A list of these 14 individuals is on page of the BTP. Eight of these individuals visited the project area with Wolforth. A draft BTP was mailed on to 19 individuals on February 7. Wolforth did receive comments on that draft, which was modified into the version that is before the HIBC today. This version of the BTP was sent out on March 9.

The BTP proposes that all burials will be preserved in place. The remains that were removed by Barrera will be returned to where they came from. For the most part, the buffers will be 20 feet from the outer edges of the burial sites. For the five cave burial sites, the buffer will be 20 feet from the outer edge of the cave projected to the surface. The entrances of the caves will be sealed. In two cases, there are larger than 20 foot buffers. One of those sites is the heiau site. The second site is within the Kohanaiki Homesteads. The Kohanaiki Homesteads is within the mauka portion of the project area and contained the homes of at least 18 families. A portion of the Homesteads will be preserved, and there is a burial cave within that area, so it will benefit from having a larger buffer.

There will be no walls built around the burial areas or signage. Ti plants will delineate the preservation areas. A 50 foot interim buffer will be in place during the construction phases of the project.

Elarionoff referred to page 9 of the BTP. Under "Burial Treatment Principles", the proposal is that the burials at all seven sites will be preserved in place. These locations are significant burial areas. Elarionoff feels that there needs to be some sort of written history that needs to be preserved that acknowledges who these people were.

Elarionoff is not comfortable with only ti plants delineating the preservation area. Ti plants do not form a real barrier. Elarionoff hoped that the wording of the BTP would allow for some sort of permanent barrier, like a rock wall to be built.

Elarionoff asked Wolforth how the cave entrances would be sealed.

Wolforth answered that it has not been finalized.

Elarionoff asked why there will not be any signage within the burial easements.

Wolforth answered the idea was to not draw attention. The lack of walls and signs keeps the area in a natural setting as opposed to drawing attention.

Elarionoff said the idea is to preserve these peoples memory for us here today, the living.

Kay said during the course of the consultations, quite a few individuals talked about the issue of secrecy of the burials, that it is not something for public consumption. There are other preservation sites where there will be signage and people will be encouraged to visit and there will be educational aspects associated with them. The idea for the burials is that they are sacred, and it was not up to Kay or Wolforth to tell the descendants how to treat the sites. If the descendants would like signage, that can be done, but what they heard during the consultations was secrecy.

Elarionoff said he can understand that.

Elarionoff asked about the landscaping within the burial easements.

Wolforth answered that right now there is a mix of native species and alien plants. Once the alien species are removed, a determination will be made on whether additional native species from the immediate area will need to be added.

Elarionoff referred to page 10 of the BTP, which is a map depicting the locations of the seven burial sites within the project area. Elarionoff asked Wolforth to confirm that Site 10728 has eight individuals buried within it.

Wolforth confirmed that Site 10728 does contain the burials of eight individuals and said that it is an interesting site because it is the only cave that has both water collections aspects and burials. The burials within this cave are historic and perhaps were placed in this cave after the people were done collecting water here.

Elarionoff asked Wolforth about the description of Site 10701.

Wolforth said Site 10701 is a beautiful stone platform. Page 12 of the BTP shows the location of the SCS test excavation within the Site which encountered human remains.

Elarionoff referred to page 11 of the BTP and asked Wolforth about the definition of a "stratigraphic trench".

Wolforth answered that a stratigraphic trench is larger than a test excavation and the material from the trench is not always screened. The goal is to expose a big area quickly. Stratigraphic trenches are used to look for burials because a smaller test unit may not identify any burials.

Elarionoff asked Wolforth if that is an invasive process.

Wolforth answered it is, but gives a better chance of finding burials.

Elarionoff referred to page 14 of the BTP. Elarionoff asked if the remains within Site 10717 were disturbed prior to the SCS work there.

Wolforth answered that this site is a cave. Most caves do not have any soil. When there is soil, it is usually near the entrance. This is a small cave. Page 13 of the BTP shows the detail of this site. Wolforth said there has been disturbance within this site, but it has been a natural disturbance. Soil has been moved by water flowing which in turn has disturbed the human remains within the cave. SCS did not conduct any digging within the site, they did not need to.

Elarionoff asked if it is possible that this cave was used as a living area by the person that was buried there.

Wolforth answered that this is a very small cave, he cannot imagine living in there.

Elarionoff referred to the bottom of page 14 of the BTP where Wolforth discusses the process of preparing a body for burial. Elarionoff understands that the bodies of Ali'i went through this process as opposed to commoners. Elarionoff does not think that this process would have resulted in bones being left behind carelessly. Elarionoff does not think that the bones would have been buried in the same cave where the body had been prepared. The reason being, the bones would have had great mana and would have been hidden where they would never be found.

Wolforth said that he did cite the sources where he got this information from.

Elarionoff asked Wolforth to explain the second paragraph on page 19 of the BTP.

Wolforth said this description is relative to Elarionoff's earlier comments about preparing a body for burial. Wolforth could not explain the fact that only teeth and finger and toe bones were identified at the site. This was one of the excavations that Barrera conducted 20 years ago, so it is possible that the rest of the body is there. Wolforth doubts that, because the remains were found scattered throughout the site. There is some speculation made based on the partial evidence that is available.

Elarionoff said that he does not want this speculation to become accepted fact.

Wolforth said we do need to be cautious on how words are used.

Elarionoff said that his response to the second paragraph on page 22 of the BTP is "no way".

Saffrey said she has noticed that there are no spaces in the ti leaf plantings to allow for visitation by descendants. Another question is how closely the ti leaf will be planted, it can grow quite thick.

Wolforth says he will modify the BTP to address that.

Sherlock said that she understands Wolforth has been in consultation with the descendants, and that is something she feels the descendants need to decide.

Young says the majority of the time, the HIBC has called for buffer zones to be delineated by rock walls. There have been times when descendants have chosen other buffer delineations. It appears there are quite a few people who have forward and Wolforth is in contact with them. It would help the HIBC if their recommendations are in the proposal.

Young said he is not comfortable with the term “Burial Treatment Principles” used on page 9 of the BTP. To Young, “principles” means these are the things you are going to do, but they can be changed. Young feels that the BTP should state “we shall” as opposed to listing principles you propose to adhere to.

Young asked how the proposal to seal cave entrances came about.

Wolforth said he has been in consultation with the descendants and has distributed drafts of this BTP with the proposal to them. Wolforth said he has not heard any major concerns regarding the proposal to seal the cave entrances. It is Wolforth’s understanding that there was agreement to that proposal.

Young asked who is Kaloko Heights Associates, LLC

Kay answered that it is the entity that actually owns the property. Stanford Carr Development is a component of that entity.

Young said page 25 of the BTP discusses inadvertent finds. The plan proposes that should there be an inadvertent discovery, and a determination made to relocate, Kahu Norman Keana’aina or his designee will be consulted for an appropriate reburial location. Young asked if Keana’aina would be the only one consulted.

Wolforth said that Keana’aina would be a point of contact. He would not be considered the one and only or the be all and end all in that process.

Young asked if the HIBC could be notified of inadvertents.

Wolforth answered yes.

Young said the plan proposes to use Sites 10722 and 10728 as the reburial locations for any inadvertents that are determined to be relocated.

Wolforth said that one site is located in Kaloko and the other in Kohanaiki.

Kay said the intention of the plan is not to say what will happen, this is a back up plan. The first thing that happens is the consultations with the descendants.

Young asked if it is the developer’s intent to build this project out fully, or will lots be sold to individuals who will in turn have to deal with the lot grading.

Kay said that it is their intent to build the project out fully. There is one parcel that they intent to sell to another development entity, that SCD will have an association with. Their plan is to also build the project out fully.

Keola Lindsey (Lindsey) said that in the event there is an inadvertent discovery during the project, the Department will be working with the landowners to determine treatment, and the Department is required to consult with knowledgeable individuals. In this case, the list of people on page 8 of the BTP provides the base for those consultations. The Department makes the determination on an inadvertent find based on all the information surrounding the discovery, information obtained from the developer and input from the descendants.

It is generally a good idea to have an idea of what could happen in the event of an inadvertent discovery, but whether the proposal would actually happen cannot be determined until the actual event occurs.

Ron Dela Cruz (Dela Cruz) said in reading the BTP, and understanding how many sites are present on the parcel, he is uncomfortable with the term inadvertent. The process of caring for the iwi under the HIBC's process and the inadvertent process are very different. The fact that we could have inadvertent discoveries here makes his na'au uncomfortable.

Dela Cruz said the iwi that have been removed from this property are in safe keeping and will be returned, but what about the "abundance" of artifacts that have been removed, will those be returned.

Dela Cruz wondered if Kaloko Heights Association would consider that any additional iwi found in this project would be considered "known". This is something Dela Cruz feels he has to ask.

Wolforth said he shares Dela Cruz's concerns. Archaeology is based on sampling, we can't dig everywhere, nobody wants to pay us to dig everywhere and nobody wants us to dig everywhere.

Dela Cruz said he still needs to ask the landowner if any additional burial finds can be considered "known".

Kay said Kaloko Heights Association will and will cause anyone that they sell the land to make every effort to alter the project design to facilitate the iwi in place. There may be legal terms that define the term "inadvertent".

Dela Cruz said he understands the definition of inadvertent within the rules. He asked this question in terms of right and wrong as opposed to what is legally defined. He asked this question on behalf of the people of this place in anticipation of more discoveries.

Cynthia Nazara (Nazara) referred to the map on page 10 of the BTP. Nazara asked if the areas depicted in red are the actual burial sites or the project lots containing the burial sites.

Kay answered that the red areas on page 10 are the actual burial areas and there will be no improvements within those areas. Because there has been no topography work done, SCD does not know the actual lay of the land and don't know how the lot lines are going to end up. The homes will not be up against the burial sites just for the sake of making use of the land. The buffers will end up being very generous.

Nazara asked Kay if the schematics of the roadways depicted in the plan will change when actual construction starts.

Kay said they are not going to let any development intrude within the burial preserves. When the lay of the land is determined, things will be moved away from the burials as opposed to moving the site.

Nazara asked if there will be another schematic after the lay of the land is determined.

Kay says that the sites have been thoroughly documented, and the minimum buffers have been established. SCD knows where those sites are and they will not encroach into the areas depicted in red on page 10 of the BTP.

Nazara referred to the third paragraph on page 25 of the BTP which states "Those seeking access to burial locations will contact individual lot owners to arrange for visitation". Nazara asked Kay if that will be included in the property deed which explains to the lot owners that access is provided.

Kay said that these burial sites will not be on any lot. The provision in property deeds is for lots next to the burial sites which explain their significance and they must be respected.

Nazara asked if the lot owners will have a list of the descendants.

Lindsey said there will be a list of descendants formally recognized by the HIBC. Lindsey said he is not sure how many of the individuals listed on page 8 of the BTP will be going through that formal process. There are people who know they have a connection to the area and do not feel they have to or want to go through this formal process.

Nazara asked if a list of the formally recognized descendants will be provided to the lot owners.

Kay said a list of the formally recognized descendants will be provided to the lot owners.

Nazara asked about the maintenance of the sites.

Kay said a Homeowner's Association will be formed and will be responsible for maintenance of all the burial sites. There will be a permanent, perpetual maintenance program.

Saffrey said she is concerned that the lot owners will be alarmed by people they do not know accessing the area to visit the burial sites. Saffrey asked if this will be a gated community.

Kay said this will not be a gated community.

Saffrey said it is important for the lot owners to know and understand that there will be people accessing the development to visit the sites.

Kay said that is why it will be part of the property deeds. In each case a road touches at least a corner of one of the burial sites so that there is a permanent public connection access.

Dela Cruz said he needs to bring up the issue of inadvertent again. The developer has given up a lot of square footage to accommodate preservation in place of the seven burial sites we know about now. To Dela Cruz, the word significant means every single burial. At what point does the developer says something is significant.

Kay said one burial is significant.

Dela Cruz said at what point does the developer say the definition of inadvertent does not mean anything at this point and we really need to sit down and take a look at this.

Kay said theoretically we could reach a point where there are hundreds of burials there and we could not do anything with that property. Kay said he does not think they are going to reach that point. Kay said he is certain they are going to find more. SCD feels each burial is significant and needs to stay exactly where it is. SCD will move the plan to accommodate that and treat it as a known. SCD will carve out preservation sites around each one in accordance with not only statutory issues, but also with community and descendants associated with that burial. Kay said he does not people messing with his grandmother's grave and would not appreciate it if someone came to him and told him how to treat that site. SCD's notion on the whole thing is that it is not up to them how to treat a site, it is up to the descendants and Kay cannot imagine right now a situation that is going to prevent SCD from putting up preservation areas around burials because they need to stay exactly where they are. If the descendants say it is ok to move the burials, then that can be considered, but it is not up to SCD to dictate that.

Dela Cruz asked about the artifacts that have been removed. Where are they.

Wolforth answered the artifacts that were removed by Barrera are in boxes. Archaeologists bunch together many things and label them artifacts, everything from poi pounders to the chips from adzes, broken shells and the debris from dinner, chicken bones. There was a wide variety of artifacts in this collection. Wolforth recalled pig bones, coral abraders which are typical items. Wolforth did not recall any specific items.

Dela Cruz asked where the boxes are.

Wolforth answered in his office in Hilo.

Dela Cruz asked how long Wolforth has had the boxes and if he has an inventory.

Wolforth answered about 8 months and he does have an inventory.

Dela Cruz asked if the plan is to return these items with the iwi.

Wolforth said that is not part of the plan, but it can be included.

Dela Cruz said these items may be moepu, that is for the people from the area to decide, not for someone else to interpret and decide for them.

Kay said it is their intention to put these items back, they did not specify that in the BTP because it was not clear what the nature of these items are. Kay stipulated that the items will be put back.

Dela Cruz said that these may not be burial goods, but they came from the burial area and they need to go back with the iwi.

Elarionoff referred to page 25 of the BTP. Elarionoff questioned the proposal in the second paragraph to reinter any inadvertent burials that are determined to be relocated within one of two sites which already have more than one individual buried within them. The rational behind the proposal is that “Caves that already have more than one iwi kanaka are receptive to more iwi kanaka.”

Elarionoff said he disagrees with that rational. Families could be buried together within a single grave, but strangers to a family should not be placed with that family.

Elarionoff asked Deputy AG Linda Chow (Chow) about the definition of “will” within the BTP. Does “will” mean Kaloko Heights Associates, LLC are the only ones who can make the rules or is it mandating that they shall do something.

Linda Chow (Chow) responded that “will” generally infers a mandate.

Elarionoff asked what happens if at some point the development is done, people are living in the community, and the community association decides not to do something anymore. Elarionoff asked what forces them to do something.

Chow said if there are failures to follow a BTP that is approved by the HIBC, those are potentially violations of 6E of the Hawai’i Revised Statutes and Chapter 13-300 of the Hawai’i Administrative Rules.

Roger Harris (Harris) says the bottom of page 25 of the BTP is clear when it states “Any harm observed at a burial location that may arise from intentional or unintentional acts, including neglect, will be immediately reported to the SHPD.”

Lindsey said if the Department becomes aware of any problems with these burial sites, the first thing the Department will do is get in touch with Kaloko Heights Associates, LLC or there successor and talk about the problem. The hope is that the problem can be remedied through that process. If the Department has no other options, we will look at punitive action.

Saffrey asked if all of the proposals within the BTP will be incorporated into the projects Conditions Covenants and Restrictions (CC&R’s).

Kay answered yes.

Young asked Lindsey if the Department has prepared recommendations for recognition of lineal and or cultural descendants.

Lindsey answered not today. Certain individuals have submitted a descendency claim application, and the Department is currently reviewing those claims. All of the individuals who have submitted claims have been consulted in the development of the BTP. Lindsey recommended the HIBC defer any recognition of lineal and or cultural descendants relative to this agenda item.

Young said the HIBC represents the descendants, and their testimony weighs very heavily. Young hopes at some point in time, the Department submits those recommendations to the HIBC.

Iwalani Arakaki (Arakaki) said she and her nieces are descendants of Kohanaiki. Arakaki said she is satisfied so far with what has been said here today.

Elarionoff asked Arakaki if she was aware of these gravesites before.

Arakaki said she knew about them last year. Her nieces have been on the mainland, and has only gotten in touch with them in the last two years.

Elarionoff asked if Arakaki is aware of anyone that has been maintaining these graves.

Arakaki said nobody she is aware of.

Marian Channels (Channels) said she just received the BTP. Channels asked if any Grants are present within the project area.

Wolforth said he does not know off hand. He will get an answer.

Channels said she is also concerned about access. The access policy on page 25 of the BTP says that they will have to contact the landowners to get access to the burial sites.

Kay said each one of the sites will have access directly to a public street.

Channels asked if the access will be walking or driving.

Kay answered walking. The access could be wider, but they do not want to encourage people driving in these areas.

Channels asked if Kahu Norman Keana'aina will be the only one consulted regarding protocol. Channels asked if other families can be involved.

Young said all of the families will be working with the developer to determine the appropriate protocol.

Olivia J. Nenio (Nenio) said many of her questions today have been answered. The next time there is a meeting on this issue, she will have more to discuss.

Curtis Tyler (Tyler) said he has not seen the BTP, but has met with Kay and the site contractor. Tyler thanked Wolforth for sending the BTP out early to 19 individuals for their review. That is something that does not always happen.

Tyler wanted to acknowledge Kay's statement regarding inadvertent discoveries. Tyler understood Kay correctly, SCD believes each burial is significant and they need to stay right where they are. Tyler was stunned, and does not think he has heard that statement from a developer before.

Tyler heard concerns regarding the sealing of cave entrances, delineation of preservation areas and access to the burial sites. Tyler assumes that the proposals in the BTP came as a result of consultations with the descendants.

The statements and proposals in BTP indicate that there will be a burial covenant that will run with the land and provide a perpetual easement. Tyler has belief from personal experience that these proposals may not be recorded. Tyler is not saying that will happen here, but has had trouble obtaining these documents in one case where he is a descendant. Every HIBC meeting moves us into a realm, a new level, there have been huge changes through the years Tyler has been attending these meetings. The whole idea of burials needs to be looked at in the context of the 'aina and the ahupua'a.

Tyler urged the HIBC to study the AIS and ordinance 83-63 which is the ordinance under which this property has its entitlements. Tyler said he does not think there have been any changes to that ordinance and it is interesting. There were some things done in 1983 by the County Council that are significant. The magnitude of this project is quite significant.

The Kohananiki Homestead Trail runs mauka makai and actually splits in this property. It comes down through Konanaiki and heads into Kaloko and splits off. From what Tyler has seen of State Registered Map #1280 is that it splits into two with one heading directly to Kaloko Fishpond and the other leads directly to 'Aimakapa Fishpond. Some portions of these trails have been damaged or obliterated through the urbanization of these areas.

Tyler recommended a 10 foot no build setback in addition to the 20 foot buffer so that no buildings are constructed right up against the burial area. In contrast, if one goes to Kanaloa at Keauhou and sees the proximity of the tennis courts and condominiums to the Heiau, one is struck at how they overpower these important sites.

Tyler said Kay has settled the inadvertent issue once and for all. If that can be incorporated into the BTP, it is huge.

Tyler said because palapala is only two dimensional, the HIBC needs to be aware of what will actually happen with the sites. In one case Tyler is aware of in Wai'aha, walls were constructed as specified, but because of the topography, the walls are 25 to 30 feet high. There is no way to access these burials, and they are actually in a huge hole. Tyler is not suggesting that this will happen here, but when you are building roads and paths it is important to know how the burials are going to fit. Kay has indicated earlier that they have not cleared the project area and generated topographical information. Is cutting and filling necessary and how will that affect access to the sites.

There are too many artifacts sitting in boxes and storage places in Hawai'i Nei and they should be returned to sites. Tyler appreciated the developer's willingness to put them back.

Tyler said there is a correct way to do things. There are the Rules and Statutes and the Constitution. Those are pololei. Are we going to do things here that are pololei or pono. Pono takes on an entirely different perspective than pololei. The fact that this developer believes each burial is significant and needs to stay right where they are is pono.

Young asked Tyler where the trail is depicted in the BTP.

Wolforth said the trail is depicted as a dotted line on page 5 of the BTP.

Tyler said he can show Young Registered Map #1280 which he referred to earlier. Tyler realizes that the HIBC meetings are not for trails, but this trail is part of the cultural landscape.

Maryanne Maigret (Maigret) said a lot of times developer needs good topographic information to figure things out, but the SHPD does not let bulldozers to do the grubbing and clearing you need to do to get the topographic information until the BTP is approved, so it is a catch 22.

Maigret said the SHPD will be working with SCD to develop specific short term mitigation measures to keep airborne debris out of preservation areas. The SHPD needs to be working with the contractor if there is a need for blasting to move material to ensure that the blasting has no impact on sites by having material go up in the air and come down on sites.

Ruby McDonald (McDonald) said she is a direct descendant to at least three people listed in the Kohanaiki Homesteads.

McDonald said there are several ways to pronounce Kohanaiki. Pukui defined Kohanaiki as small bareness. McDonald's grandmother told her that Kohanaiki is the sound of a whip. If you go makai on certain nights, you can hear the sound of a whip, what it is McDonald does not know. This is from her tutu on her dad's side, who was born and raised in Honokohau. Another tutu, Auntie Eleanor Makita, who is a well known Hawaiian historian interprets the definition for the people who stayed next to Kaloko and took care of Kaloko.

The three people McDonald descends from on page 4 of the BTP are Kaikoili, Haau whi is her great-great grandfather and Kapa. McDonald has submitted a descendancy claim application for cultural descendancy.

There is no mention of the Kohanaiki Homesteads in mahele records or grants simply because these were set up later. There was an act of 1884 that consolidated the Land Commission. The land laws of 1895 established three types of Homesteads. Kohanaiki Homesteads were the type you could lease to buy.

McDonald asked what type of ti leaf will be planted. There are many different types.

McDonald had a correction on page 7 of the BTP, first paragraph, second to the last sentence. "Pua" is not mullet. Pua are the young fish that become 'ama'ama that then become 'anae.

Page 8 of the BTP indicates that no contact information is available for Mel Kaninau. McDonald has the contact information.

McDonald said she just got the BTP, so she really has not had time to go through it.

McDonald referred to page 14 of the BTP, second paragraph. The site description for Site 10717 indicates there may be more iwi buried in the soil, and asks Lindsey if more iwi are found at this site, will they be considered "previously known".

Lindsey said Site 10717 is a previously known site.

McDonald said she has the name of another possible descendant which she will give to Wolforth. Saffrey asked what type of ti will be planted. She assumed it will be the native green ti.

Wolforth said that is on his list to consult with the descendants.

Saffrey said you have to be careful in the selection. There is a beautiful, perfect variety of green ti that is wonderful, but it has been introduced from Indonesia.

McDonald asked what the purpose of the ti planting is.

Saffrey said to delineate the burial preserves.

Young encouraged the descendants to continue working with the developer on the details of the BTP. Young also wanted to address the issue of the artifacts.

Elarionoff said the issue has been discussed and Kay and Wolforth have responded very positively. Elarionoff would like to give Kay and Wolforth the chance to respond.

Dela Cruz said he would like to see a inventory of the artifacts.

Harris said clearly if the items are moepu, they need to go back. If there are some items that are not moepu, maybe they can be put in an interpretive center on site would be better than ending up in a box.

Young said he is concerned about the topography issue. Young is surprised that this development has gone this far without topographical information.

Maigret said it is an issue that comes up a lot. Maigret said she thinks the Chapter 10 grading and grubbing ordinance still has an exclusion for survey work.

Young said he would like to discuss a HIBC site visit to the property. The entire Council can go, or a task force could be appointed.

Harris asked how many Council members can be on the task force.

Chow answered more than 2 but less than a quorum, for the HIBC quorum is 7, so the task force would be 2-6 members.

Lindsey said the task force would be appointed today, the results of the site inspection would be discussed in April and any determinations would be in May.

Young said the site visit would be on a day of the task force's choosing, it would not have to be on the day of the April HIBC meeting. Young asked if the meeting would be open to the public.

Tyler suggested that should a task force be appointed, descendants should be included in the site visit. It may be helpful for the HIBC to have the descendants present.

Chow said if descendants are going to be invited, it is important that the purpose of the task force be clear, is it to just get information about the sites or is it to get information about the sites and from the descendants. The Council also needs to determine if the visit will be to all of the sites or just a sampling of sites.

Young asked Wolforth how long a site visit to all the sites would take.

Wolforth answered at least 6 hours.

Elarionoff said he would also like to take a look at the vegetation within the burial areas.

McDonald asked if the site visit will be published.

Chow said there will be no notice of the site visit.

Lindsey said in April the discussion of the site visit results will be on the agenda which will be published so that the public has the opportunity to be present for those discussions.

*A motion was made to form a task force consisting of Dutchie Saffrey, Cynthia Nazara, Charles Young, Roy Helbush, Leningrad Elarionoff and possibly one of the following: Roger Harris, Ron Dela Cruz and Ulu Sherlock. The purpose of the task force will be to conduct a site visit to the known burial sites or a representative sampling of the known burial sites on TMK (3) 7-3-009:032. The existing native and alien vegetation within the burial areas will be examined. Descendants will be invited to the site visit for the specific purpose of obtaining input and any information from them relative to the burial sites.
(Sherlock/Elarionoff)*

Vote: All in Favor

A motion was made to close Agenda item III.A. (Dela Cruz/Elarionoff)

Vote: All in Favor

The meeting was recessed for lunch at 1:15 pm.

The meeting was reconvened at 205 pm.

B. SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

Information/Determination: Discussion of the Hawai'i Island Burial Council's role as a consulted party under Section 106. Discussion of the most effective ways for the Hawai'i Island Burial Council to respond to requests for consultation. The Hawai'i Island Burial Council will determine whether to appoint a designated task force to review Section 106 consultation requests.

Lindsey said the HIBC has been a consulted party in the past as a Native Hawaiian Organization under Section 106. Lindsey distributed certain documents to the HIBC which provide basic information regarding the Section 106 process. Section 106 is triggered when there is Federal involvement. It could be Federal Land, like Pohakuloa. It could be Federal funds, like money being provided for a road project. It could be Federal permits. Section 106 in Hawai'i requires the agency that is undertaking the project to consult with The State Historic Preservation Officer, Peter Young, but also Native Hawaiian Organizations. The HIBC, OHA, Hawaiian Civic Clubs and Hui Malama are examples of Native Hawaiian Organizations that are consulted.

Since the HIBC is a State appointed Board and meet only once a month within the boundaries of open meetings, the HIBC does not have the latitude that other organizations may have in responding

to consultation requests. The HIBC needs to discuss what the most effective way is to respond to consultation requests.

Young said he received a letter from Pohakuloa asking for the HIBC to concur with their findings. The findings did not have to do with burials. The letter was seeking a response from the HIBC, but Young did not feel comfortable because the entire Council was not aware of the letter and Young did not want to respond on behalf of the HIBC.

The question becomes, what do we do. Do we respond as an entire Council after discussing the matter. There are other ways for the Council to respond. If the matter is placed on the agenda in their full form, on some occasions the opportunity to respond may have passed. An example of 106 consultation Young recalled was the Keck outrigger telescope project which was funded by NASA. The HIBC received a significant amount of testimony on that matter. Some of these items are very important and significant and the HIBC would want the opportunity to comment.

Lindsey said the HIBC can continue receiving the consultation requests as they do now. The consulting agency sends the information to Kapolei and that information is sent out in the monthly meeting packets. The matter can be placed on the agenda and the HIBC can discuss and determine an appropriate response.

There is an option of appointing a task force to respond to the consultation requests. A potential problem there is that at least two meetings are required in order for any determinations to be made. The HIBC's opportunity may have passed.

Julie Endicott-Taomia (Endicott-Taomia) said that Pohakuloa runs under a Programmatic Agreement (PA) which the Advisory Council on Historic Preservation (ACHP) encourages to streamline the process or take into account any unusual circumstances. The telescopes on Mauna Kea are also under a PA. It may be possible to amend those Programmatic Agreements to allow the HIBC more time to comment.

Dela Cruz asked if the HIBC can appoint a task force on a 6 month to 6 month basis that would be responsible for reviewing 106 consultation requests.

Chow said another option would be to appoint a sub-committee. The sub-committee could address any issues that come up with Section 106 and determine which issues will be presented to the full Council for a discussion and determination. There could still be some problems because the HIBC meets only once a month.

When the consultation request comes in, the sub-committee could meet and determine whether it needs to be presented to the full Council and if so, the matter could be placed on the next HIBC agenda for discussion. Determinations would have to be made at the next meeting however, so we still run into the same problem as we have with the task force.

Endicott-Taomia said if the HIBC does not respond within 30 days, the Federal agency can assume the HIBC concurs with their findings. Endicott-Taomia wondered if it would be possible for the sub-committee to review a consultation request and should they determine it to be a matter for the full Council's review, send a letter to the Federal agency confirming the HIBC's desire to respond and explaining the timeframe for the HIBC to legally respond.

Chow said that is a possibility. One concern is whether the Federal agency would allow that extra time.

Endicott-Taomia said at least the HIBC would have responded and expressed an interest to respond.

Chow said it may be possible to delegate the authority to respond to the HIBC Chair.

Endicott-Taomia said a response from the HIBC expressing interest or concern in the matter may trigger the Federal agency to send a representative.

Sherlock said there is a cultural committee involved at Pohakuloa. Sherlock wondered if it would be possible to work collaboratively with that group.

Chow said that could be a responsibility delegated to the HIBC Chair.

Endicott-Taomia said the Pohakuloa PA specifically identifies the HIBC as a consulted party, Pohakuloa is required to contact the Council.

Saffrey said as a new member to the Council, she needs the background all of these issues to understand where it is all coming from.

Harris said this is something that has come up before. There are often requests to be on the agenda for Section 106 consultation. Harris has always felt that the HIBC is a State agency that deals with burial treatment plans and the statutes and rules related to that and the HIBC should not be consulted under 106 like the Civic Clubs and other organizations are. On the other hand, maybe it is good for the HIBC to be consulted, but it takes away from the HIBC's regular responsibilities.

Maybe a form letter can be drafted to respond to consultation requests that basically says follow the burial laws and be careful. Harris wondered about the definition of a Native Hawaiian Organization, if the HIBC is one, does that mean the Planning Commission and the Land Use Commission is one too.

McDonald said that the HIBC has a specific mandate. If there are burials involved with any project, the HIBC should be consulted. If there are no burials involved with an action, McDonald wondered why the HIBC should be involved.

McDonald wanted to know more about the Pohakuloa PA Endicott-Taomia referred to earlier, McDonald said she has never heard of that.

Young said the consultation letters come to him as the Chair, and he does not feel comfortable responding without first presenting the matter to the full Council. Maybe everything should not be given to the full Council, but Young is not sure who will make that determination.

Endicott-Taomia clarified that the PA at Pohakuloa is just for the Stryker Brigade.

Endicott-Taomia said the definition of Native Hawaiian Organization within Section 106 is extremely broad, and that she suspects Federal agencies are consulting everyone they can think of to cover themselves.

Tyler said there is a cultural advisory committee and Pohakuloa and there are several members in attendance at this meeting, but he does not think that committee is a consulted party like the HIBC is. If there are questions about the PA, just contact Pohakuloa and Tyler is sure they will provide a copy of the executed PA. Tyler thinks it is a good idea for the HIBC to be consulted because it is noticed on the agenda and members of the public have the opportunity to assist in any decision making. Tyler said the HIBC should always be consulted whenever there are known or possible burials involved in some action. Tyler said it is an excellent idea to consider delegating the authority to respond to consultation requests to the HIBC Chair.

Tyler said Bill Godby is the Cultural Resources Program Manager at Pohakuloa Training Area and he does an excellent job keeping people informed. Godby would be the one to contact regarding the PA.

Young said Section 106 consultation is a complex issue. The purpose of this agenda item was to begin discussion on it. Young said there are a few issues that have come up that he would not want the Council to miss. At this point in time, all of the consultation requests should be going to the full Council for review.

Harris asked if there are burials at Pohakuloa.

Tyler said not many, but yes.

Harris asked if the HIBC ever dealt with them.

McDonald said yes, back in 1997. Lorie Lucking approached the HIBC about a reinterment. McDonald said she recently received a letter on this matter, the HIBC should have gotten one too. The HIBC was supposed to do a site visit, but never got it together and McDonald never heard about it again.

A motion was made to close this agenda item. (Sherlock/Elarionoff)

Vote: All in Favor

Saffrey said at last month's meeting, it was recommended that the Burial Council's budget be agendaized this month. That issue is not on the agenda. Saffrey wanted to know what the status of that is. When the Council requested it, what happened.

Lindsey said he missed that issue when he prepared this month's agenda. Lindsey asked Saffrey what type of remedy she would like to see.

Saffrey said she would like the matter on the April agenda.

C. AMENDED ARCHAEOLOGICAL MONITORING PLAN FOR VEGETATION CLEARING AT THE SHORELINE PARK AT HOKULI'A

NORTH AND SOUTH KONA DISTRICTS, HAWAII ISLAND TMK: MULTIPLE

Information: Discussion of the SHPD's review of the archaeological monitoring plan for vegetation clearing within the Shoreline Park at Hokuli'a. Discussion of the SHPD's recommendation that consultation with the community and recognized descendants occur prior to formal approval of the plan.

Lindsey said Oceanside 1250 has submitted this plan to the SHPD for review. The vegetation clearing is being done to facilitate the archaeological mapping of sites within the Shoreline Park which will eventually contribute to the overall preservation plan for the park.

As part of the review of the plan, the SHPD has requested Oceanside 1250 consult with the community and recognized descendants on this plan.

Steve Clark of Pacific Consulting Services, Inc. is the consultant hired by Oceanside 1250 to coordinate the consultations and Lindsey understands that consultation packets have already been sent out, and responses have been received.

Maigret said the creation of the shoreline park was a condition of the Hokuli'a projects original development approvals. In order to interpret and move forward with the preservation plan for the shoreline park detailed maps need to be generated. A similar monitoring plan for the northern portion of the shoreline park was approved and implemented where there were archaeological monitors present while they were removing vegetation. That work included removing invasive shrubs and in some cases trees that had fallen and threatened the integrity of some sites. That work was done under a Conservation District Use Permit (CDUP). The vegetation management plan which includes archaeological monitoring is a condition of the CDUP.

Once the detailed mapping is finished, they can move forward with specific proposals about interpretation and access to sites in the park in consultation with the descendants, which is required for preservation plans.

Lindsey said there are burials within the shoreline park.

Young asked if those burials have been addressed by a burial treatment plan.

Lindsey said he believed so, but will confirm.

Young said the shoreline park is about 140 acres.

Maigret said this plan does not include any portion of Pu'u 'Ohau.

Tyler asked if any part of Hokukano Village within the shoreline park.

Maigret said no. Hokukano Village is under a separate lease agreement and will subject to a separate archaeological inventory and preservation plan.

Tyler asked who it leased to.

Lindsey says nobody at this point.

Tyler said he is a recognized descendant and has not received the consultation packet that was referred to earlier.

Lindsey said he will follow up on that matter.

A motion was made to close this agenda item. (Harris/Elarionoff)

Vote: All in Favor

IV. CASE UPDATES

A. TMK (3) 7-3-002:009 KALAOA 2ND AHUPUA'A, NORTH KONA DISTRICT, HAWAII ISLAND

Information: Discussion of the State Historic Preservation Division's (SHPD's) approval of a final preservation plan for burials on the subject TMK parcel detailed in a February 1, 2006 letter.

Lindsey said the February 1, 2006 letter details the SHPD's approval of a final preservation plan for the burials on this TMK parcel.

B. TMK (3) 9-3-003:073 PU'U'EO AHUPUA'A, KA'U DISTRICT, HAWAII ISLAND

Information: Discussion of the SHPD's approval of a final preservation plan for burials on the subject TMK parcel detailed in a February 1, 2006 letter.

Lindsey said the February 1, 2006 letter details the SHPD's approval of a final preservation plan for the burials on this TMK parcel. The Council had recommended expanding the permanent buffer zone from 20 to 25 foot and establishment of an interim construction buffer of 75 feet. The Department concurred with those recommendations and the landowner agreed to them so the revisions were incorporated into the final approval.

C. TMK (3) 7-3-007:070 O'OMA AHUPUA'A, NORTH KONA DISTRICT, HAWAII ISLAND

Information: Discussion of the SHPD's approval of a reduction of the buffer zone on the north side of Site 23828, located on the subject property detailed in a March 2, 2006 letter

Lindsey said the Department approved the slight reduction of the buffer zone around the north side of Site 23838 from 20 to 17 feet. The developer has recently discovered that the property line is at the 17 foot mark on that side of the burial. The remaining details of the plan will be fully implemented.

Young said he is concerned that a burial treatment plan would have been presented without having the metes and bounds descriptions confirmed

D. TMK (3) 6-8-022:047 KALAHUIPUA'A, WAIKOLOA AHUPUA'A, SOUTH KOHALA DISTRICT, HAWAII ISLAND

Information: Discussion of the SHPD's approval of a revision to a burial treatment plan for inadvertently discovered human skeletal remains detailed in a March 1, 2006 letter.

Lindsey said the SHPD approved the request by a developer to not implement one component of a mitigation plan for an inadvertently discovered burial site. The plan called for large boulders to delineate the preservation area to block vehicle access to the area. When construction was completed, the nearest road is 85 feet away and vehicle access to the area is not possible.

Young asked if there were descendants to the area.

Lindsey said there were people who were consulted, but no formally recognized descendants to Kalahuipua'a.

E. TMK (3) 5-4-009:014 HANAULA AHUPUA'A, NORTH KOHALA DISTRICT, HAWAII ISLAND

Information: Discussion of a letter dated March 3, 2006 in which the SHPD requests immediate protection measures for the Lincoln Family Burial Plot.

Lindsey said the Department is working the landowner of this TMK parcel to put up fencing to prevent cattle from intruding into the burial area. The landowner is willing to put up the fencing. The area is in the Conservation District, so the work needs to be coordinated with the DLNR- Office of Coastal and Conservation Land.

F. TMK (3) 8-9-003:001 OKOE BAY, OKOE AHUPUA'A, SOUTH KONA DISTRICT, HAWAII ISLAND

Information: Discussion of the SHPD's ongoing work with families to document and establish protection measures for burial sites in the Okoe Bay area detailed in a March 3, 2006 letter.

Lindsey said the SHPD is continuing to work with Darrel De Silva to protect family burial sites in the Okoe Bay area. People are accessing the area more often and there are concerns over how to protect the burial and other cultural sites there. One idea that has been discussed is putting up signage in the area explaining the significance of the sites. The area is zoned Conservation and putting up the signs may involve the DLNR- Office of Coastal and Conservation Lands. Okoe is part of the area that has been designated as the South Kona Wilderness Area.

A motion was made to close this agenda item. (Harris/Elarionoff)

Vote: All in Favor

V. INADVERTENT DISCOVERIES

Information/Recommendation: Informational presentation by SHPD staff on inadvertent discoveries of skeletal remains reported to the Department in the month of February 2006 on the following property.

A. 'AUHAUKEA'E AND PUA'A AHUPUA'A, NORTH KONA DISTRICT, HAWAII ISLAND TMK (3) 7-5-009. Inadvertent Discovery of human skeletal remains during excavations for the Kuakini Highway 16-inch Waterline Improvements Project. Discussion of the SHPD's determination detailed in a letter dated March 3, 2006.

Lindsey said a contractor excavating for this project encountered human remains and all work was immediately stopped. The SHPD's determination to relocate the remains is detailed in a March 3, 2006 letter. The plan for the relocation is currently being generated. A meeting was held on March 14, 2006 to discuss the relocation plan. All involved parties will review the plan. Once the Division approves the plan, the relocation effort will proceed.

Harris said relocating the remains out of the Kuakini Highway right of way sounds like the only option.

Dela Cruz said that he is very concerned about the issue of inadvertents. Situations like this are going to come up, but overall he is very concerned, maybe there should be different categories.

Lindsey said he understands the overall concerns. In this particular case the decision was either leave the remains under the road or relocate them to a better place.

Elarionoff asked how the Kuakini Highway was built over this burial.

Lindsey said Kuakini Highway was built in the mid-1950's and the burial may not have been identified during that initial construction.

Young said now they are going deeper to put the waterline through and they hit it.

Saffrey said she has met people who worked on the Kuakini Highway back in the 50's and 60's who have mentioned burials were encountered.

McDonald said the burial was discovered near the Coconut Grove marketplace. She is a descendant of the area and they have a family crypt near by. The archaeologist involved with this case has mentioned the possibility that these remains could have been disturbed previously during the original construction of Kuakini in 1954. McDonald said that they have previously found numerous bone fragments in the area.

Historically and pre-historically this area was the kahuahale of Keopuolani. It was a huge complex. Numerous burials were found near where Lulu's Restaurant is now. There is a burial crypt in the sidewalk in the area. McDonald said her uncle worked on Kuakini Highway and told her they found a cave where McDonald's Restaurant is now and there were burials wrapped in lauhala in the cave.

A motion was made to close this agenda item. (Helbush/Elarionoff)

Vote: All in Favor

VI. ANNOUNCEMENTS

VII. ADJOURNMENT

A motion is made to adjourn the meeting. (Helbush/Elarionoff)

Vote: All in Favor

The meeting was adjourned at 355 pm.

